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AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
ARIZONA WATER COMPANY, AN ARIZONA  
CORPORATION, TO EXTEND ITS EXISTING  
CERTIFICATES OF CONVENIENCE AND  
NECESSITY AT CASA GRANDE AND  
COOLIDGE, PINAL COUNTY, ARIZONA

DOCKET NO. W-01445A-04-0755

IN THE MATTER OF THE APPLICATION OF  
WOODRUFF WATER COMPANY, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER SERVICE

DOCKET NO. W-04264A-04-0438

IN THE MATTER OF THE APPLICATION OF  
WOODRUFF UTILITY COMPANY, INC. FOR  
A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE SEWER SERVICE

DOCKET NO. SW-04265A-04-0439

STAFFS' CLOSING BRIEF

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1       **I. Introduction**

2           The main disputed issue in this case is whether the Commission should grant Arizona Water  
3       Company ("AWC") or Woodruff Water Company ("Woodruff") the Certificate of Convenience and  
4       Necessity ("CC&N") for the Sandia subdivision in Pinal County. There is no dispute that both  
5       AWC and Woodruff possess the minimum financial, managerial, and technical capabilities to be  
6       awarded a CC&N. Applications for a CC&N are evaluated under a public interest standard. *James*  
7       *P. Paul Water Co. v. Ariz. Corp. Comm'n*, 137 Ariz.426, 671 P.2d 404 (1983). Thus, the question  
8       before the Commission is which alternative would better serve the public interest.

9           Although it is a close question, Staff believes that the public interest is best served by  
10       awarding the disputed area to Woodruff. AWC and Woodruff spent seven days of hearing filling the  
11       record with marginally relevant minutia, such as disputes over pipeline roughness co-efficients or  
12       hydrologic testing methods. If this trivia is cast aside, the central fact of this case is that a new  
13       sewer company will serve the Sandia development. Woodruff's affiliate, Woodruff Utility  
14       Company ("Woodruff Sewer", together with Woodruff, the "Woodruff Companies") will provide  
15       the sewer service for the Sandia development. If Woodruff and Woodruff Sewer both serve Sandia,  
16       they will be able to mutually support each other, increasing the viability of both companies.

17           This mutual support will occur in four ways. First, the two Woodruff companies will be  
18       able to share resources, such as employees and office space. Second, Woodruff Sewer will be able  
19       to rely on the financial strength of its sister company. Third, Woodruff will be able cut off water  
20       service if a customer does not pay its sewer bill. Lastly, Woodruff Sewer will provide a source of  
21       effluent for Woodruff.

22           This mutual support will not occur if AWC is granted the CC&N for the disputed area. In  
23       this scenario, Woodruff Sewer will face the world orphaned and alone. Stand-alone sewer  
24       companies have had numerous problems in recent years. The public interest is not served by  
25       creating another such company when there is an opportunity to instead create a more viable  
26       integrated water and sewer operation.

27       ...

28       ...

1       **II.     Woodruff Sewer is the only option to serve Sandia.**

2           AWC once claimed the City of Coolidge was “ready, willing and able” to provide sewer  
3 service to Sandia. (AWC objections to Staff Report, at p.4). There is no evidence to support this  
4 claim. In fact, the record evidence shows that the Coolidge will not serve Sandia. In response to  
5 data requests from Staff, AWC supplied numerous emails from Coolidge officials declining to serve  
6 Sandia. (Ex. S-1). To make sure there was no mistake, Staff contacted Coolidge directly.  
7 Coolidge’s Economic Development Director responded that Coolidge did not want to serve Sandia,  
8 and that “it works to the City’s benefit at this time for the Sandia project to stand on its own.” (Ex.  
9 S-5). Further, Coolidge’s City Manager wrote a letter which specifically stated that “the City has  
10 no plans to expand the City’s sewer facility to serve Sandia and I support Woodruff Utility  
11 Company’s CCN Application.” (Ex. S-3).

12           Even AWC now concedes that Woodruff Sewer will serve Sandia. AWC’s president, Mr.  
13 Garfield, testified that AWC was not contesting Woodruff Sewer’s application. (Tr. at 765-67).  
14 Garfield also testified that Woodruff Sewer will likely serve Sandia. (Id.).

15       **III.   The Commission should recognize the benefits of the mutual support the Woodruff**  
16       **Companies can provide each other.**

17           Since Woodruff Sewer will serve Sandia, the public interest supports granting the water  
18 CC&N to Woodruff so that the two Woodruff companies can mutually support each other, thereby  
19 increasing the viability of both companies. As Assistant Director Olea testified, “Staff must base its  
20 recommendation on goals to ensure the long term viability and compliance of water and wastewater  
21 utilities.... Staff recognizes integrated utilities provide enhanced services to work in conjunction  
22 public policy goals.” (Ex. S-4 at 15).

23           **A.     The Woodruff Companies could gain economies of scale by sharing**  
24           **resources.**

25           AWC will likely argue that it will be able to provide economies of scale in providing water  
26 service. That is correct, as far as it goes. But what about sewer service? If AWC is the water  
27 provider, Woodruff Sewer must operate as a stand-alone company. But if Woodruff is granted the  
28 water CC&N, the Woodruff Companies will be able to achieve economies of scale by sharing

1 resources. For example, they may be able to share employees, equipment, and office space. For  
2 this reason, Olea testified that "Staff supports regional planning for water and wastewater to ensure  
3 an economy of scale for **both** services." (Ex. S-4 at 15, emphasis added). Standing alone,  
4 Woodruff Sewer will not be able to achieve these economies of scale, and it will thus suffer reduced  
5 financial viability and possibly higher rates.

6 **B. Woodruff Sewer should not be denied the opportunity to rely on the**  
7 **financial strength of Woodruff.**

8 Woodruff's lead witness, Mr. Najafi, testified that the Woodruff Companies would be able  
9 to rely on each other's financial resources, as well as the financial resources of their parent, Pivotal.  
10 (Tr. at 74, 79). If Woodruff is granted the water CC&N for Sandia, Woodruff Sewer will be able to  
11 rely on the joint financial strength of the Woodruff Companies. It is well-known that it easier to  
12 make money running a water company than a sewer company. No doubt this is why AWC refuses  
13 to enter the sewer business. The public interest is not served by such cherry-picking. Instead, the  
14 public interest is served by the enhanced financial viability provided by integrated providers of  
15 water and sewer service.

16 **C. Woodruff Sewer will not be able to effectively terminate service unless**  
17 **Woodruff is granted the water CC&N.**

18 A major problem faced by stand-alone sewer companies is terminating service because they  
19 can't easily turn off their service. (Garfield, Tr. at 773). The only effective way for a sewer  
20 company to terminate service is for the water company to terminate water service. This poses a  
21 substantial difficulty when the water and sewer companies are separate. Further, the Commission's  
22 rules prohibit a water company from terminating service for failing to pay the bill of an unaffiliated  
23 sewer provider. (See A.A.C. R14-2-410(A)("Rule 410")). Thus, a stand-alone sewer company  
24 often has no effective way to terminate service to delinquent customers. This makes collecting  
25 overdue amounts difficult. These serious collection problems substantially reduce the financial  
26 viability of stand-alone sewer companies.

27 AWC tries to brush aside this problem by speculating that the Commission might approve a  
28 waiver from Rule 410. AWC points to Decision No. 66998 (May 24, 2004)(Ex. AWC-24). In that  
decision, the Commission approved a tariff waiving Rule 410 and allowing Arizona-American

1 Water Company to terminate water service to a customer who failed to pay for sewer service  
2 received from the City of Bullhead City. Garfield testified that this was the only such waiver that  
3 he was aware of. (Tr. at 773). Staff is not aware of any similar waivers. Given the number of  
4 stand-alone sewer providers (both municipal and private), Decision No. 66998 is the exception that  
5 proves the rule.

6 AWC's reliance on this singular waiver is misplaced. In the Bullhead City case, the waiver  
7 was supported by an extensive agreement that provided adequate consumer protections. Moreover,  
8 this agreement was authorized by a city ordinance. (Decision No. 66998 at Finding of Fact 4). Of  
9 course, Woodruff and AWC lack the power to enact such ordinances. The importance of having an  
10 ordinance is highlighted in Commissioner Mundell's February 25, 2003 letter. (Attachment to  
11 AWC-24). Further, Bullhead City's municipal status is another distinguishing factor. As a  
12 municipality, Bullhead City is presumed to act in the public interest and it is owed comity as a  
13 public entity. These factors are not present when sewer service is provided by a public service  
14 corporation.

15 The Commission can avoid these problems by granting Woodruff the water CC&N for  
16 Sandia. This factor strongly weighs in favor of Woodruff.

17 **D. The Woodruff Companies working together can better use the effluent**  
18 **produced by Woodruff Sewer.**

19 By promoting the efficient use of effluent, integrated water and sewer companies promote  
20 water conservation and other important policy goals. Integrated providers promote the "policy  
21 goals of clean water, use of reclaimed water for turf facilities and recharge of the aquifer." (Ex. S-4  
22 at 15). As Olea explained, "[u]nified water and wastewater utilities should be better suited to  
23 comply with groundwater management requirements by sharing customer information between  
24 divisions, recognizing groundwater credits for irrigation well retirement and ensuring reuse permits  
25 obtain maximum value." (Id.). Most importantly, if Woodruff is the water provider, it will provide  
26 Woodruff Sewer with a ready sales mechanism for selling its effluent. The close cooperation  
27 between the Woodruff Companies will encourage the maximum use of effluent, reducing  
28 dependence on groundwater. In contrast, Woodruff Sewer has no incentive to help AWC earn

1 profits selling effluent. And AWC will likely continue its unfortunate practice of attempting to  
2 obstruct other entities from selling effluent in its water certificate area. *See Arizona Water*  
3 *Company v. City of Bisbee*, 172 Ariz. 176, 836 P.2d 389 (App. 1992). .

4 **IV. Stand-alone sewer companies should be avoided where possible.**

5 Stand-alone sewer companies pose many problems. The problem of terminating service,  
6 described above, is one example. Stand-alone sewer companies have sometimes encountered  
7 serious financial and management problems. Some of these companies have even failed. The cases  
8 of Casitas Bonitas and AUSS are notorious examples. (Tr. at 1340-41). Disaster was averted in  
9 those cases only by concerted effort by the Commission and other public agencies. Olea  
10 emphasized this point:

11 And with the experience that Staff and this Commission has had with stand-  
12 alone wastewater compan[ies], if there is a chance that we could find a viable  
13 wastewater and water company to be basically one entity, then that's what Staff is  
going to recommend.

14 And in this case you had a water and a wastewater that were basically one  
15 entity. They were large enough or planned to be large enough to be viable that Staff  
felt that recommending Woodruff Water for the water for the Sandia project would  
be the best alternative for the Commission. (Tr. at 1366).

16 Considering this factor, the "scale tips slightly in favor of Woodruff only because it has a  
17 wastewater utility, and that's because there is a better chance for everything to work and to be  
18 viable if the two are together." (Olea, Tr. at 1374).

19 Another problem with stand-alone sewer companies is that it is difficult to coordinate hook-  
20 ups and other work with the water company. AWC attempts to make lemonade out of this lemon by  
21 touting its cooperation with sewer providers. But this cooperation is problematic. AWC shares  
22 customer information with sewer providers. (Tr. at 772-73). Garfield testified that the Commission  
23 never authorized this sharing of information. (Id.). Staff understands that the Commission strongly  
24 supports consumer privacy, and Staff therefore finds that AWC's lack of Commission approval, and  
25 the fact that AWC did not even request Commission approval for this action is troubling.

26 **V. AWC's arguments are without merit.**

27 **A. The Water Task Force Order does not support AWC.**

1 AWC relies heavily on the *Water Task Force Order* and the resulting Staff memorandum to  
2 support its position. (*Water Task Force Order*, Decision No. 62993 (November 03, 2000))(Ex.  
3 AWC-13) and Staff Memo (Ex. WWC-45)). For example, AWC points to Finding of Fact 8(a) of  
4 the *Water Task Force Order*. AWC claims that this represents a policy approved by the  
5 Commission. But Olea – a leader of the Water Task Force – testified that the policies discussed in  
6 the order needed further Commission action to put into effect. (Tr. at 1338). AWC points to the  
7 ordering paragraph approving staff's recommendations. But Olea explained that the "actual" staff  
8 recommendations were shown by underlining in the order. (Tr. at 1399 and 1419). Finding of Fact  
9 8(a) was not underlined. Thus, even if AWC interpretation of the ordering paragraph was correct,  
10 Finding of Fact 8(a) was not included in the recommendations approved by the Commission.

11 AWC also points to the Staff Memorandum generated in response to the *Water Task Force*  
12 *Order*. Olea – who wrote the Memorandum – pointed out that the Memorandum recommends the  
13 Commission consider the attached proposed policies at an Open Meeting. (Tr. at 1339). The  
14 Commission never held such a meeting. (Id.) The Commission has let the Staff Memorandum  
15 languish without action for more than four years. That is the opposite of the endorsement  
16 suggested by AWC. Moreover, the proposed policies attached to the Staff Memorandum are all  
17 entitled "Proposed Policy" – a clear indication that they are not yet in effect. (Tr. at 1340).

18 Even if these policies were in effect, they would be of no help to AWC. AWC takes the  
19 policies out of context. Olea explained that they were intended to deal with the problem of very  
20 small water companies, such as a "100-customer water company." (Tr. at 1366-67). In contrast,  
21 Woodruff will have thousands of customers. As Olea testified, "the plans are that this is going to be  
22 a large water company, its going to be a large wastewater company and they would work better  
23 together." (Id.).

24 **B. The *Mountain Glen Order* does not support AWC.**

25 AWC also relies on the *Mountain Glen Order* (Decision No. 67277)(October 05, 2004). On  
26 the surface, *Mountain Glen* does provide support for AWC. After all, the Commission rejected the  
27 water company supported by a developer in favor of an existing, neighboring water company. But  
28 a closer look reveals that *Mountain Glen* is inapposite. The Commission noted that it was not good



1 public policy to allow “numerous, marginally viable **small** utilities”. (*Mountain Glen* at 7, quoting  
2 Decision No. 66780 (February 13, 2004)(emphasis added)). The Commission was clearly  
3 concerned with new small companies. The vast scale of Sandia shows that Woodruff will not be  
4 small.

5 The Commission further stated that its policy is “to promote the orderly growth of **small**  
6 water companies”. (*Mountain Glen* at 7)(emphasis added). Olea explained that Mountain Glen  
7 was a small, marginally viable company whose viability would be enhanced by the new  
8 development. (Tr. at 1408-10; 1426-27). In contrast, AWC is a very large, viable company. (Id.).  
9 In short, AWC doesn’t need Sandia to be viable.

10 **C. AWC’s engineering arguments are without merit.**

11 AWC may suggest that it needs the growth that Sandia will provide. But AWC will likely  
12 serve 25 other subdivisions in its Coolidge system alone. (Ex. AWC-11; Tr. at 1185-86). AWC’s  
13 Vice President of Engineering, Mr. Whitehead, testified that AWC’s Coolidge system “will be  
14 growing exponentially.” (Tr. at 1186). Again, AWC just doesn’t need Sandia to be viable.

15 AWC suggests that the Sandia area will serve as a barrier to interconnecting its Casa Grande  
16 and Coolidge systems unless it gets the water CC&N for Sandia. A simple glance at the map will  
17 show that there are numerous ways to interconnect these systems. (Ex. AWC-11 and AWC-12C).  
18 Whitehead testified that even without Sandia, AWC could install mains to interconnect along  
19 McCartney, Randolph, Kleck and Storey Roads, which will all be major “section line” roads. (Tr.  
20 at 1187). Moreover, AWC’s Tierra Grande system will likely be interconnected into both the  
21 Cooldige and Casa Grande systems. Whitehead testified that growth is so explosive that “it’s going  
22 to be a leg race whether we tie it to Coolidge first or we tie it to Casa Grande first.” (Tr. at 1188).

23 AWC makes a related argument that it needs to run a main through the Sandia property to  
24 connect its Cooldige system its proposed storage tank on Signal Peak Mountain. (Tr. at 1189-91).  
25 But even if AWC does not get the CC&N for Sandia it can run this main through the Sandia  
26 property. Whitehead testified that if the Sandia is annexed into Cooldige, then there will be public  
27 utility easements along the roads that AWC can use for this purpose. (Id.) Najafi testified that  
28 Sandia will, in fact, be annexed by Cooldige. (Tr. at 46:14-17). Even if the area is not annexed, the

1 Commission could condition Woodruff's CC&N to require that Woodruff share its easements with  
2 AWC for this purpose.

3 AWC also criticizes Woodruff's plan to use hydropneumatic tanks to pressurize its system.  
4 But AWC itself uses hydropneumatic tanks in some of its systems. (Tr. at 1191-92). Whitehead  
5 testified that AWC provides quality service in these systems. (Id.).

6 AWC also argues that its regional scale will allow it to provide more reliable service. But  
7 Whitehead testified that Woodruff's system could be interconnected to AWC's, so that service could  
8 be provided in an emergency. (Tr. at 1193-94). Olea testified that "a lot of different water  
9 companies... tie into their neighbors even if they are not related just for emergency purposes and to  
10 ensure reliability and the like." (Tr. at 1421-22; *see also* Ex. S-4 at 15). AWC uses this same type  
11 of interconnection to support its service to its White Tank system. (Whitehead, Tr. at 1192-94).

12 AWC makes much of its numerous wells, miles of mains, and other physical facilities  
13 scattered throughout the state. But most of these facilities have nothing to do with providing  
14 service to Sandia. Further, even with all of these vast resources, AWC will still have to construct  
15 new facilities to serve Sandia. (Olea, Tr. at 1421). Olea testified that both Woodruff and AWC will  
16 need additional capacity, but they have "the capability to develop capacity" to serve Sandia. (Id.).

17 **D. Future rates are unknown.**

18 AWC argues that its rates will be lower than Woodruff's. But the future rates of AWC and  
19 Woodruff could be affected by numerous factors. Olea testified that there are too many unknowns  
20 to compare rates in the future. (Tr. at 1426). Moreover, if AWC is granted the water CC&N,  
21 Woodruff Sewer will lose economies of scale that may raise its rates.

22 **VI. Miscellaneous issues.**

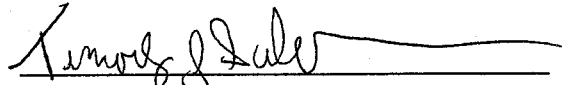
23 Leaving the Sandia property aside for the moment, AWC has also requested a CC&N for  
24 various other properties in the vicinity. There are not requests for service for some of these  
25 properties. AWC should not be granted a CC&N for the properties for which there is no request for  
26 service, since there is no demonstrated need for those properties. (Olea, Tr. at 1417-18).

27 Olea testified that in the circumstances of this case, the time frame to submit approvals to  
28 construct should be extended to two years. (Tr. at 1342).

1 **VII. Conclusion.**

2 Staff recommends that the Commission grant (1) Woodruff the water CC&N for Sandia; (2)  
3 Woodruff Sewer the sewer CC&N for Sandia; and (3) AWC a water CC&N for the remaining  
4 properties for which it has a request for service.

5 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of September 2005.

6 

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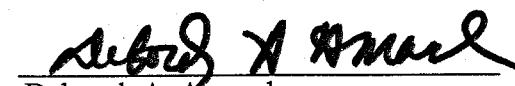
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